South Sudan

Constitutional confusion around revenue roles is a recipe for conflict

Let’s talk about tax

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South Sudan, the world’s newest state, is also one of its most fragile. Repeated international attempts to end the country’s civil war, which broke out in December 2013, have failed with predictable regularity. Meanwhile, ongoing violence has forced nearly 2m people to flee their homes, according to March 2015 estimates from the Economist Intelligence Unit.

Against this backdrop—of seemingly never-ending violence and political posturing—unresolved questions about intra-governmental relationships and constitutional fine print are easily ignored.

Yet these questions will need to be addressed if a peaceful South Sudanese state, accountable and responsive to its citizens, is ever to arise.

A series of disputes between state governors and South Sudan’s central finance ministry since independence in 2011 are indicative of a larger constitutional challenge—confusion around fiscal decentralisation.

South Sudan is divided into ten states, carved from three historic former provinces and contemporary regions—Bahr el Ghazal in the north-west, Equatoria in the south, and Greater Upper Nile in the north-east.

The disagreements have featured state governors and finance ministers, especially those from states that produce oil or host trade routes, refusing to remit funds to the central government.

Oil is the backbone of the country’s economy. Even with war curbing oil production, petroleum accounted for approximately 50% of the country’s GDP in 2014, according to the latest IMF estimates.

Clement Wani Konga, governor of Central Equatoria, has been one of the loudest voices critical of South Sudan’s tax collection system. Mr Konga’s disaffection dates back to October 2012, when he made public statements—picked up by local newspapers—blaming a corrupt central revenue-collection system for financial losses in his state.

In turn, the central finance ministry has harboured suspicions about state-level corruption. Revenue collection at state level is crooked "across the board", James Wani Igga, South Sudan's vice-president told local media last year.

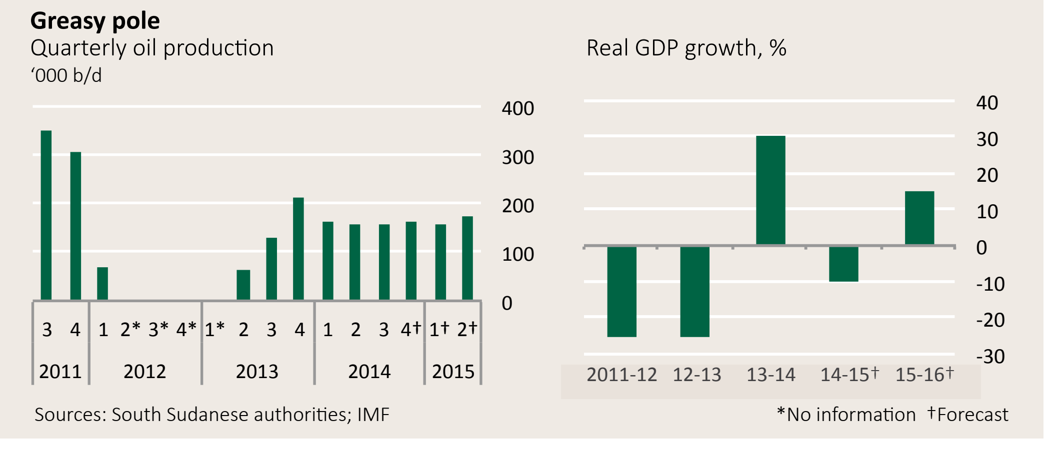
The central government cited state-level sleaze as a reason for any remittance delays and used this pretext in May 2012 to centralise revenue collection, taking this power away from states.

The problem lies partly in South Sudan's 2011 transitional constitution, which does not clearly delineate fiscal decentralisation obligations.

South Sudan's transitional constitution was fostered under the provisions of the 2005 Comprehensive Peace Agreement (CPA), which helped pave the way for the country's 2011 independence. This interim document calls for a constitutional commission to draft a permanent constitution through a consultative process initially scheduled to end roughly a year after independence. This process has stalled and a permanent constitution is yet to be ratified.

According to part 12, chapter 4 of the transitional constitution, both states and the national government have the right to levy taxes in South Sudan. Additional national and state-level taxation powers are laid out in the Tax Act and the Local Governance Act, which both date back to 2009.

Clashes over tax revenues are woven in the region's history. Before the CPA, as Douglas Johnson explains in his 2014 book "Federalism in the History of South Sudanese Political Thought", the Khartoum government



maintained power in part by granting the southern region the autonomy to deliver public services while simultaneously maintaining a stranglehold on the fiscal levers.

Both the central and state governments have a lot to lose. Central Equatoria benefits from the trade that flows from Uganda to the capital Juba, whereas commerce from Sudan has historically flowed into northern Bahr el-Ghazal.

In the midst of the constitutional confusion, poorly trained tax administrators have been knowingly or unwittingly breaking the country’s tax laws. The problem lies with the interim constitution, the Local Government Act and the Tax Act, which do not clearly define which level of government has the power to collect different types of taxes. Moreover, budget-squeezed law enforcement officers are also infamous for collecting illicit taxes from traders within states.

In November traders protested in Wau, a city in western Bahr el-Ghazal, claiming that taxes are levied unfairly or ad hoc at multiple collection points, according to the UNICEF-linked Catholic Radio Network, based in Juba. Similar protests also erupted in Eastern Equatoria’s Torit shortly after independence.

The region’s shifting history accounts for much of the confusion. While South Sudan may be the world’s newest country, state-building attempts are taking place within the confining legacy of previous efforts.

These include Khartoum’s endeavours before South Sudan’s independence in 2011 as well as those of British colonial officials when then-unified Sudan was known as the Anglo-Egyptian Condominium. Before oil was discovered in the southern territory that is now South Sudan in the early 1970s, the region was neither profitable for the British nor the Khartoum regime that followed.

Moreover, given the legacy of economic underdevelopment that southern Sudan experienced under both the British and the northern Sudanese, the country’s persistent reliance on oil and imports for revenue is understandable.

As a result, there are simply too few, if any, domestic sectors to tax other than oil. And while some communities pay “in-kind” taxes through grain, the formal tax system does not capture most citizens. According to a 2011 World Bank report, 80% of southern Sudanese work in the informal economy.

Administrative confusion, particularly around the quasi-military operations that continue to collect illicit taxes, also makes historical sense. Rebel groups demanded payments during the civil wars that led to South Sudan's independence, as Mr Johnson spells out in his book, "The Root Causes of Sudan's Civil Wars".

Following the outbreak of violence in December 2013, debates around federalism—and the most effective way to structure power between the central government and the states—have captured the hearts and minds of many in South Sudan.

Unfortunately, these debates focus too narrowly on political considerations and neglect broader questions about continuing revenue disputes and fiscal decentralisation.

This omission is logical because southern Sudan has historically depended on limited tax revenue, and ending violence between warring parties is an obvious priority. But taxes are the lynchpin to forging a social contract between citizens and the state and also critical to maintaining a healthy balance of power. This oversight needs to be rectified.

Other African constitutions such as those of Kenya, Rwanda and South Africa have tackled fiscal decentralisation. These charters might hold answers for South Sudan, argues Biong Kual Deng, a former representative with the International Institute for Democracy and Electoral Assistance, an inter-governmental body helping to draft a permanent constitution.

The enduring conflict has drastically reduced oil production and the subsequent much-needed government revenue. An unseen benefit may arise as the debate shifts to ending this reliance and exploring how to generate other sources of revenue, particularly from the informal economy.

Moreover, emergent research argues that when firms in the informal economy pay taxes, a greater share of the population engages with the state, which in turn increases political accountability and responsiveness.

Buyers of South Sudan's oil and debt—which notably include China, and international donors such as Norway, the UK and the US, are the country's remaining fiscal lifelines. The tensions are unlikely to subside unless all parties—including the state, citizens, international donors and the creditors and buyers of South Sudan's oil—bring tax into the conversation. This means clarifying its role within the constitution and ensuring that tax policy is accurately reflected on the ground. GG